

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 National Trust for Historic Preservation, et
10 al.,

11 Plaintiffs,

12 v.

13 Raymond Suazo, et al.,

14 Defendants.

No. CV-13-01973-PHX-DGC

ORDER AND INJUNCTION

15
16 This case involves the Bureau of Land Management's ("BLM") decision to allow
17 recreational target shooting throughout the Sonoran Desert National Monument. The
18 Court previously found that this decision violated BLM's duty under a Presidential
19 Proclamation to manage the Monument so as to protect the "objects" of the Monument.
20 The Court also found that portions of BLM's environmental impact statement violated
21 the National Environmental Protection Act. The Court therefore vacated BLM's decision
22 regarding shooting and remanded the issue "to BLM for reconsideration of that decision
23 in light of the shortcomings identified in this order." Doc. 43 at 22-23.

24 Plaintiffs subsequently filed a motion for injunctive relief. The Court found that
25 injunctive relief was appropriate, but that further evidence was needed to craft the
26 injunction. Doc. 54. The Court ordered an appropriate representative of the Bureau of
27 Land Management ("BLM") to submit an affidavit addressing: "(1) the earliest
28 practicable date by which BLM can comply with the Court's previous order (Doc. 43);

1 and (2) recommended interim measures that will limit the damage that recreational
2 shooting is inflicting on Monument objects, including but not limited to damage to
3 animals and their habitats, protected plants and vegetation, sites of historic or
4 archeological significance, and areas used by the public.” Doc. 54 at 12. Defendants
5 have submitted the requested affidavit and Plaintiffs have responded. Docs. 55, 56.

6 **I. Parties’ Recommendations Regarding Scope of Injunction.**

7 Ronald C. Tipton, the acting field manager for BLM’s Lower Sonoran Field
8 Office, has submitted an affidavit addressing the issues identified by the Court. Doc. 55-
9 1. Tipton states that September 30, 2017 is the earliest practicable date by which BLM
10 can comply the Court’s previous order. *Id.*, ¶ 6. As for interim measures that will limit
11 the damage that recreational shooting is inflicting on Monument objects, Tipton states:

12 [A]fter reviewing the Court’s order the BLM notes that the area along the
13 El Paso Natural Gas Pipeline right-of-way has been identified as having
14 concentrated target shooting that may be unsuitable for this activity. The
15 SDNM Recreational Target Shooting Analysis . . . included photographs of
16 the effects of concentrated target shooting from this area . . . including
17 incidents of vandalism to public lands, government property, and
18 Monument objects Intensively-used shooting sites tend to be
19 “adjacent to vehicle routes” . . . with the shooting sites along the El Paso
20 Natural Gas Pipeline the most easily accessible of the Monument. Such
21 harm to Monument objects is less likely to occur from dispersed
22 recreational target shooting where access by vehicle is more difficult and
fewer numbers of target shooters congregate. Based on these observations,
the BLM recommends that closure of this area may be effective in limiting
damage to Monument objects. Closing this area is likely to redirect
recreational target shooters to public lands outside the Monument, thereby
eliminating concentrated impacts to Monument objects. This area includes
a one quarter-mile wide area adjacent to the El Paso Natural Gas Pipeline
right-of-way, where that right-of-way forms the northern boundary of the
Monument, including an area extending one quarter-mile to either side of
BLM Route 8001.

23 *Id.*, ¶ 7. Tipton also states that BLM law enforcement will regularly patrol the area he
24 has identified, as well as other areas. *Id.*, ¶ 8. Finally, Tipton affirms that “BLM will
25 continue to engage in education and outreach efforts to all parties interested in
26 recreational target shooting on the Monument.” *Id.*, ¶ 9.

27 Plaintiffs have responded to Tipton’s affidavit. Doc. 56. They state that they do
28 not object to the September 30, 2017 deadline, “so long as meaningful interim closures

1 are in place to protect the Monument's objects from target shooting." Doc. 56 at 4.
2 Plaintiffs point out many problems with BLM's proposals. The area that BLM proposes
3 to close off to recreational shooting covers only three percent of the Monument's acreage.
4 This interim measure, they assert, would not ameliorate the environmental harm that
5 shooting inflicts on approximately 97% of the Monument. The Juan Bautista de Anza
6 National Historic Trail in particular would remain open to the harms caused by target
7 shooting. Finally, Plaintiffs argue that BLM's proposals to continue education and
8 outreach efforts, as well as to patrol the Monument to ensure compliance with
9 regulations, are similar to the administrative actions that the Court previously found to be
10 inconsistent with BLM's duty to protect Monument objects. See Doc. 43 at 11-14.

11 Instead of BLM's proposal, Plaintiffs recommend that the Court order the closure
12 of an area that BLM had previously identified as being unsuitable for target shooting due
13 to the "significant presence" of Monument objects. See A.R. 22034. This area
14 encompasses approximately 80.2% of the Monument and includes Monument objects
15 such as the palo verde mixed cacti community, the habitat of the Sonoran desert tortoise,
16 and historic and cultural sites. *Id.* Plaintiffs stress that their approach prevents harm to
17 Monument objects while still allowing shooting within portions of the Monument.

18 **II. Analysis.**

19 "An injunction is a drastic and extraordinary remedy, which should not be granted
20 as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010).
21 "A district court has 'broad latitude in fashioning equitable relief when necessary to
22 remedy an established wrong.'" *High Sierra Hikers Ass'n v. Blackwell*, 390 F.3d 630,
23 641 (9th Cir. 2004) (citation omitted). A district court can abuse its discretion "by
24 deferring to agency views concerning the equitable prerequisites for an injunction,"
25 *Sierra Forest Legacy v. Sherman*, 646 F.3d 1161, 1186 (9th Cir. 2011), or by crafting an
26 overbroad injunction, *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th
27 Cir. 1991).

1 The Court is confronted with widely differing proposals. BLM's proposal would
2 protect only three percent of the Monument, although Plaintiffs do not dispute that it is a
3 three percent that sees heavy shooting activity. Plaintiffs' proposal would close most of
4 the Monument. See Doc. 56-1 at 29. The Court could order an evidentiary hearing to
5 address these divergent proposals, but BLM is already preparing a new resource
6 management plan and the Court is reluctant to engage in an analysis of which measures
7 best protect Monument objects while BLM is engaged in the same analysis. As
8 explained by the Ninth Circuit:

9 In a variety of settings, including protection of the environment, the Ninth
10 Circuit has shown considerable deference for factual and technical
11 determinations implicating substantial agency expertise. . . . [D]etermining
12 what measures are needed through extensive fact intensive inquiry is
13 precisely the purpose of the long term environmental review ordered by the
14 district court It would be odd to require the district court to conduct an
extensive inquiry, which would by nature involve scientific determinations,
in order to support interim measures that are designed to temporarily
protect the environment while the BLM conducts studies in order to make
the very same scientific determinations.

15 *Idaho Watersheds Project v. Hahn*, 307 F.3d 815, 831 (9th Cir. 2002).

16 The Court is not well-enough informed enough to craft an injunction different
17 from the parties' proposals, and therefore must accept one or the other. Given the drastic
18 nature of injunctive relief and the deference courts generally should afford agency
19 judgments, the Court will adopt BLM's proposed interim measure. By this decision, the
20 Court does not intend to imply what result should come from BLM's renewed
21 examination of the Monument's protection.

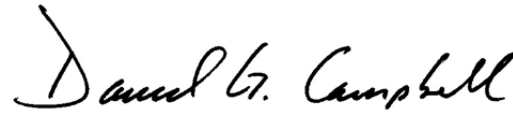
22 **IT IS ORDERED:**

- 23 1. By September 30, 2017, BLM shall complete its reconsideration of the
24 portions of the ROD, RMP, and Final EIS that the Court found deficient in
25 its previous order (Doc. 43).
- 26 2. Within 60 days of this order, BLM shall implement the interim measures
27 that Ronald Tipton proposed in his affidavit (Doc. 55-1). These measures
28 shall include prohibiting recreational target shooting within the area

1 identified in the affidavit and the accompanying map (Doc. 55-2).

2 3. The Clerk shall enter a final judgment in this case.

3 Dated this 17th day of July, 2015.

4
5
6 

7
8

David G. Campbell
United States District Judge